

**Guidelines or Standards of Practice in Administrative Hearings held
before the Missouri Department of Mental Health**

The rules of practice set forth herein are applicable to administrative hearings and hearings-related matters that pertain to the Department of Mental Health and are presided over by the Hearings Administrator for the Department of Mental Health or the Hearings Administrator's designee.

I. Facility Representative – expectations

A. Facility Representative questions on presentation of case and/or related matters. If the Facility Representative is not an attorney and has any questions, comments, or concerns about presenting the case for the facility, such matters should be addressed with the Facility's attorney, that is, the Assistant General Counsel or Assistant Attorney General assigned to the Facility. Such questions should not be addressed to the Hearings Administrator. The Hearings Administrator does not help either side present their case. The Hearings Administrator is a neutral, impartial decision maker who after reviewing and considering the evidence that is presented in the administrative hearing makes a decision as to whether the Facility Administrator actions should be upheld, modified, or overturned.

B. Witness list. The witness list containing names of individuals who will testify in person or by telephone should be completed by the Facility Representative prior to commencement of the hearing.

C. Opening and Closing statements. Opening statements are to give the Hearings Administrator an overview of what the evidence will be. Closing statements are an opportunity to summarize what the evidence has shown. Facility Representative should not use opening and closing statements as a way for him/her to offer testimony in his/her case. Basically, the Facility Representative is not allowed to testify in his/her case. A closing statement should only discuss the evidence that has been presented; it should not be used by the Facility Representative to state evidence that he/she failed to present in the case. For example, if the transferring facility does not have a Dialectical Behavior Therapy program in place, then the Facility Representative should have a witness testify to that point. The Facility Representative should not wait until closing statements to present this information. The Facility

Representative must keep in mind he/she is not a witness in the case, he/she is presenting the case for the facility. Facility Representative should keep in mind that the Hearings Administrator requests copies of the notices and reads the allegations that are the subject of the hearing prior to the hearing so that opening statements are not mandatory for the Hearings Administrator. Also, the Hearings Administrator does not require that closing statements be made at every hearing. Facility Representative should use discretion in determining when he/she should make a closing statement.

D. Facility's Reception. Facility Representative should let the receptionist know the date and time of hearing so that when the Hearings Administrator arrives at the facility for the hearing, the Hearings Administrator may be quickly directed to the appropriate person and location for the hearing. The Hearings Administrator's presence at the facility should not be the first time the receptionist is aware that a hearing is to take place at the facility.

E. Client Advocate or Representative. In transfer and revocation of forensic client's conditional release cases, as soon as Facility Representative learns that the client will be assisted by an advocate, he/she should provide copies of the proposed exhibits to the advocate so he/she can review them and discuss them with the client prior to the hearing. If this occurs, the Hearings Administrator will inquire before going onto the record if the client will stipulate to the transferring facility's exhibits being admitted into evidence. If the client stipulates to an exhibit the Facility Representative may not need to ask the usual foundation or background questions that would otherwise be necessary to properly introduce a document into evidence.

F. Continuance or Withdrawal received by Facility Representative or Facility Personnel. If the Facility Representative or Facility personnel receive a request for a continuance, a statement in which the appellant withdraws his/her hearing request, or questions regarding the hearings process, the Facility Representative or Facility personnel should immediately forward the written communication to the Hearings Administrator or refer the client/appellant to telephone the Hearings Administrator's office. In all cases except where the Facility Administrator withdraws its action, i.e., rescinds the transfer to a more secure setting, revocation of forensic client's conditional release or substantiation of abuse,

neglect, misuse of client funds/property, decisions to continue a hearing or cancel a hearing are made by the Hearings Administrator.

G. Scheduling hearings. 1. In all cases except for transfer and revocation of a forensic client's conditional release cases, when a hearing has been requested the Hearings Administrator will contact the Facility Representative to arrange a mutually convenient date for the hearing. The Hearings Administrator will contact the Facility Representative by telephone to schedule the hearing. The Hearings Administrator expects to schedule the hearing within five working days of her notifying the Facility Representative that a hearing has been requested. If the Facility Representative does not respond to the Hearings Administrator's first telephone call, she will place an additional two telephone calls on two separate days within the five working days. If after three calls, the Facility Representative does not respond to the Hearings Administrator telephone calls, the hearing will be scheduled and the Facility Representative will be sent a notice of hearing. If the Facility Representative requests a continuance because he/she is not available on the date stated in the notice, the Hearings Administrator will take into consideration whether the Facility Representative responded to the Hearings Administrator's telephone calls to schedule the hearing.

2. To schedule a hearing in transfer of minor to adult ward and transfer to maximum security setting as well as revocation of forensic clients conditional release cases, the Facility Representative is expected to call the Hearings Administrator at (573) 751-8097. It is not appropriate to e-mail this information to the Hearings Administrator.

II. Witnesses

A. The hearing is being tape recorded. Witnesses should refrain from having anything in their mouth that interferes with their ability to speak clearly. An example of this would be gum, mints, etc.

B. Witnesses should not volunteer information and should only answer questions that are addressed to them.

C. After they are done testifying witnesses should wait to be excused by the Hearings Administrator before leaving the room.

D. While the hearing is in progress, witnesses will be referred to as Ms. Mr., Dr., Director, followed by their surnames. While the hearing is in progress, witnesses and the Facility Representative should not first names when referring to the Hearings Administrator.

E. A mental health professional such as a psychologist or psychiatrist who will be giving fact testimony such as diagnosis, clinical definition of diagnosis, and treatment of client, may testify by phone. **The Facility Representative should not assume a witness will be allowed to testify by telephone.** The Facility Representative should first confer with the Hearings Administrator and obtain approval for a witness to testify by telephone. If the Hearings Administrator approves for a witness to testify by telephone, then the Facility Representative should arrange to have a telephone with a loud speaker in the room where the hearing will be held and the “block” taken off the telephone so that the Hearings Administrator can place long distance calls directly from the hearing room.

F. It is acceptable for a witness to refer to records in a client or appellant’s chart to refresh his/her memory while testifying; however, it is not acceptable for a witness to read his/her testimony into the record. For instance, a witness should not bring in notes and respond to questions by reading their notes. **It is only acceptable to read a document into the record when requested to do so.**

G. As a general rule all witnesses should remain outside the hearing room until they are called to testify. The Hearings Administrator may make exceptions to this rule for good cause shown.

H. Witnesses should specify a date or time period that the event they are testifying to occurred. For example, when did the witness observe client strike another client. If the witness has no firsthand knowledge of the event, the witness should specify records show that on _____, client struck another client. Dates and time periods, allows the Hearings Administrator to have a point of reference to events that have transpired regarding the client.

III. Physical Evidence

A. If the Facility Representative does not wish for the Hearings Administrator to take the physical object that is referenced at the hearing such as chair, pills, stick, or a rod, from the hearing room after the hearing is

adjourned, then a photograph of the object should be taken before the hearing is convened, during the hearing the Facility Representative should have a witness who is familiar with the object identify the photograph and the contents thereof, and the photograph should be offered into evidence. The general practice is that all evidence is submitted at the hearing, not before or after the hearing is concluded.

IV. Subpoenas

A. The Hearings Administrator will issue subpoena(s) when the Hearings Administrator receives a written request that includes the name of the person and the address where the person can be served with the subpoena.

B. Requests for subpoena(s) *duces tecum* should be made in writing and specify the documents the person is to provide, where he or she should bring the documents, and suggest a date when the documents are to be provided.

C. The Hearings Administrator will not disclose to the other party, this includes the Facility Representative who is representing a DMH Facility Administrator, the names of persons who have been issued subpoena (s) to appear at the hearing or to provide documents.

V. Exhibits

A. All documents that are offered and/or admitted into evidence should be labeled with a colored exhibit sticker. **Do not use white exhibit stickers.**

VI. Continuance requests

A. All continuance requests should be in writing with a copy sent to the opposing party and made as soon as possible before the date of the hearing. The Hearings Administrator will take into consideration the date the hearing request was received in connection with the date of the hearing in determining whether a continuance will be granted.

VII. Notices

A. In all transfer cases, a copy of the notice of transfer that has been signed by the head of the facility or his/her designee as well as the acknowledgement of service of the notice on the client or guardian should be offered as an exhibit by the Facility Representative.

VIII. Requests

A. All requests, including but not limited to request for continuances, documents, tapes, subpoenas, protective orders, and copies of decisions, shall be made in writing and directed to the attention of the Hearings Administrator. If the Hearings Administrator has any questions about the request, the Hearings Administrator will speak with the person who made the request or a message from the Hearings Administrator will be related to said person.

B. The decisions are issued in accordance with the time frames set forth in the Revised Statutes of Missouri, Department Operating Regulation, or Code of State of Regulations. If the applicable law does not establish a time period for when the decision must be issued, the Hearings Administrator tries to issue written decisions from contested hearings within thirty (30) days from the date of the hearing. Requests for the status of a decision before the decision is due should not be made directly or indirectly (to staff at the Hearings Administrator's office) to the Hearings Administrator. If you are supposed to receive a copy of the decision, the decision due date has passed, and you have not received a copy of the decision, it is appropriate to call the Hearings Administrator's office.

C. All written requests for documents, i.e., subpoenas, protective orders, motions to dismiss, should be submitted to the Hearings Administrator as soon as possible prior to the date of the hearing. If an emergency arises and a request is sent on the day of the hearing or within one or two days of the hearing, the person making the request should fax the written request to the Hearings Administrator at (573) 522-6259 and call the Hearings Administrator's office at (573) 751-8097 to inform the Hearings Administrator that the request is forthcoming.

IX. Cellular Telephones

A. Cellular telephones should be turned off while the hearing is in progress. The Hearings Administrator will take brief recesses before the hearing is adjourned and during that time participants in the hearing may check their cellular telephone for messages as well as return urgent calls.

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